

Initiative Measure To Be Submitted Directly To The Voters

The County Counsel has prepared the following title and summary of the chief purpose and points of the proposed measure:

OFFICIAL TITLE AND SUMMARY COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

- The measure would enact an ordinance to add Chapter 11.39, entitled "Adult Films," to Title 11, Health and Safety, of the Los Angeles County Code.
- The purpose of the measure is intended to minimize the spread of sexually transmitted infections by regulating the adult film industry.
- The measure would require producers of adult films to obtain a public health permit from the Los Angeles County Department of Public Health (the "Department") and pay a permit fee set by the Department in an amount sufficient for necessary enforcement.
- The measure would provide for a permitting process that requires application submission and proof of completion of a blood borne pathogen training course, after which a permit shall be issued. The measure also requires submission of an exposure control plan.
- The measure would require use of condoms for all acts of anal or vaginal sex during the production of adult films, as well as the posting of the public health permit and notice to performers regarding condom use.
- The measure would authorize the Department to enforce the provisions of the ordinance, including suspending or revoking the public health permit for violating the ordinance, or any other law, following notice and an opportunity for an administrative review. Prior notice would not be required if any immediate danger to the public health and safety is found or reasonably suspected. Violation of the ordinance would be subject to civil fines and/or criminal misdemeanor charges.
- The measure would provide that in the event another ballot measure relating to permits for the adult film industry appears on the same ballot, that this measure shall prevail if it receives the greater number of affirmative votes, and the competing measure shall be null and void.
- The measure authorizes the Board of Supervisors to amend the chapter by ordinance, passed by a majority vote, in order to further its purposes. The chapter may only be repealed by ordinance adopted by a vote of the electors or by an amendment of the Los Angeles County Charter superseding the ordinance.
- The measure provides that if any part of the ordinance is held to be invalid or unconstitutional, then the remaining provisions shall be severable and remain in full force and effect.

NOTICE OF INTENTION TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the County of Los Angeles for the purpose of minimizing the spread of sexually transmitted infections resulting from the production of adult films in the County of Los Angeles. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

Every employee deserves a safe workplace. It's only fair.

The County of Los Angeles Safer Sex in the Adult Film Industry Act ("the Act") will protect performers in Los Angeles' adult film industry, their spouses and other sexual partners, from sexually transmitted infections ("STIs"). In the time since California's Supreme Court declared that the production of adult films is legal, the Los Angeles Department of Health has documented thousands of cases of chlamydia and gonorrhea within the industry. The industry's failure to use condoms has also caused unknown numbers of HIV, hepatitis, syphilis, human papillomavirus and genital herpes infections. But the producers of adult content continue to put workers at risk of infection by not using condoms.

Because this ongoing health crisis is centered in Los Angeles County, the Act would require the producers of adult films to obtain permits from the Department of Public Health and comply with basic safer-sex practices in the production of all commercial adult films. The cost of issuing permits and enforcement would be covered by fees paid by producers. The Act will cost the taxpayers nothing.

The County regulates many businesses where public health is a concern. The Public Health Department regulates restaurants, tattoo parlors, vending machines, laundries, swimming pools and more. The adult film industry should also be regulated.

The industry needs to clean up and protect its performers, and the general public, from the spread of disease.

The American Public Health Association, the American Medical Association, the California Medical Association, the National Coalition of STD Directors, the California STD Controllers Association and other public health advocates have called for condom use in the adult film industry. It is time for Los Angeles to follow the advice of public health experts and require that adult film workers are given condoms to protect them from infections at work.

It is unfair for the adult film industry to expose performers to disease. It is unfair for adult film producers to shift the cost of diseases onto performers and taxpayers. It is unfair for one industry to routinely violate workplace safety laws and regulations, while other industries follow the law. Protecting workers in Los Angeles County's adult film industry is the right thing to do for the health of workers in the industry, and the County as a whole.

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TEXT OF THE PROPOSED MEASURE

COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

The people of the County of Los Angeles ordain as follows:

SECTION 1. Title.

This ordinance shall be known and may be cited as the County of Los Angeles Safer Sex in the Adult Film Industry Act.

SECTION 2. Findings and Declaration.

The people of the County of Los Angeles hereby find and declare all of the following:

- (a) The HIV/AIDS crisis, and the ongoing epidemic of sexually transmitted infections as a result of the making of adult films, has caused a negative impact on public health and the quality of life of citizens living in Los Angeles.
- (b) Safer sex practices are a prime method of preventing and reducing the spread of HIV/AIDS and other sexually transmitted infections.
- (c) The California Supreme Court has determined that the production of sexually explicit adult films is legal in the State of California.
- (d) The Los Angeles County Department of Public Health has documented widespread transmission of sexually transmitted infections associated with the activities of the adult film industry within Los Angeles County.
- (e) The Los Angeles County Department of Public Health has stated that the use of condoms is the best and most effective way to stem the spread of sexually transmitted infections within the adult film

industry.

Multiple organizations committed to protecting the public health have called for use of condoms in the production of adult films, including the American Medical Association, the American Public Health Association, the California Conference of Local AIDS Directors, the California STD Controllers Association, the National Coalition of STD Directors, the National Association of City and County Health Officials, AIDS Healthcare Foundation and the California Medical Association.

Producers of adult films are required by California Code of Regulations Title 8, Section 5193 to use barrier protection, including condoms, to protect employees during the production of adult films.

The Los Angeles County Department of Public Health has found that many producers of adult films in Los Angeles consistently violate the worker safety provisions of California Code of Regulations Title 8, section 5193.

SECTION 3. Purpose and Intent.

The people of the County of Los Angeles hereby declare their purpose and intent in enacting this ordinance is to minimize the spread of sexually transmitted infections resulting from the production of adult films in the County of Los Angeles, which have caused a negative impact on public health and the quality of life of citizens living in Los Angeles. This Act will require the producers of adult films to obtain a permit from the Los Angeles County Department of Public Health to ensure that producers comply with preexisting law requiring, among other things, that performers are protected from sexually transmitted infections by condoms. The Act further authorizes the Los Angeles County Department of Public Health to take appropriate measures to enforce the Act, and conditions any

film permit issued by the County for the production of an adult film on the use of condoms and other safety precautions.

SECTION 4. Chapter 11.39 is hereby added to Division 1 of Title 11 of the Los Angeles County Code to read:

CHAPTER 11.39

ADULT FILMS

ADULT FILMS; SHORT TITLE AND PUBLIC POLICY

Part 1 DEFINITIONS

11.39.005 Definitions

Unless the provision or the context otherwise requires, the definitions in this part shall govern the construction of this chapter.

11.39.010 Adult film

An "adult film" is defined as any film, video, multimedia or other representation of sexual intercourse in which performers actually engage in oral, vaginal, or anal penetration, including, but not limited to, penetration by a penis, finger, or inanimate object; oral contact with the anus or genitals of another performer; and/or any other sexual activity that may result in the transmission of blood and/or any other potentially infectious materials.

11.39.020 County.

"County" means the County of Los Angeles.

11.39.030 Department.

"Department" means the Los Angeles County Department of Public Health.

11.39.040 Departmental regulations.

"Departmental regulations" means the regulations pertaining to filming of adult films promulgated by the department as currently written or as may from time to time be amended. When adopted by the department, these regulations are incorporated in and become part of this chapter.

11.39.050 Exposure control plan.

"Exposure control plan" means a written plan that meets all requirements of Title 8 California Code of Regulations sections 3203 and 5193, to minimize employees' risk of exposure to blood or potentially infectious material.

11.39.060 Filmed or filming.

"Filmed" and "filming" means the recording or real-time broadcast of any adult film, regardless of the medium used.

11.39.070 Potentially infectious material.

"Potentially infectious material" shall have the same meaning as defined in Title 8 California Code of Regulations Section 5193(b), or any successor regulation.

11.39.075 Producer of adult film

"Producer of adult film" means any person or entity that produces, finances, or directs, adult films for commercial purposes.

11.39.076 Permittee

"Permittee" means any person or entity issued an adult film production public health permit pursuant to this chapter.

Part 2 GENERAL REQUIREMENTS

11.39.080 Adult film production public health permit.

A.

Producers of adult films shall obtain a public health permit by filing a completed application form with the department and paying the required fee. The fee shall be set by the Department in an amount sufficient to provide for the cost of any necessary enforcement.

1. During the twelve (12) months immediately following the effective date of this chapter, adult film production public health permits may be issued on a conditional basis. An individual issued a conditional permit shall have up to six months from the date of application to provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department. If permittee is a business entity rather than an individual, permittee shall have up to six months from the date of application to provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department for all principals and management-level employees of permittee, including, but not limited to, all film directors. Failure to provide such proof within the prescribed time shall cause the conditional adult film production public health permit to be revoked immediately.

2. At all times after the twelve (12) months following the effective date of this chapter, each applicant who is an individual must also provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department. Each applicant who is a business entity rather than an individual must provide the department with proof of successful completion of a blood borne pathogen training

course that has been approved by the department for all principals and management-level employees of permittee, including but not limited to all film directors.

B.

Upon successful completion of the permit application process described in subsection A of this section, the department shall issue an adult film production public health permit to the applicant. The adult film production public health permit will be valid for two years from the date of issuance, unless revoked.

C.

No producer of adult films may engage in the making of adult films in Los Angeles County for commercial purposes unless that producer of adult films has a valid adult film production public health permit issued by the department.

D.

An adult film production public health permit is nontransferable.

11.39.090 Posting requirements.

A.

The adult film production public health permit issued to the producer of adult films must be displayed at all times at the location where any adult film is filmed in an area that is visible to performers.

B.

A legible sign shall be displayed at all times at the location where any adult film is filmed in any conventional typeface with a font size not smaller than 36 points, that provides the following notice so as to be clearly visible to performers in said films:

The use of condoms is required for all acts of anal or vaginal sex during the production of adult films to protect performers from sexually transmitted infections.

Any public health concerns regarding any activities occurring during the production of any adult films should be directed to the Los Angeles County Department of Public Health:

(the program office address and telephone number to be provided by the county health officer).

11.39.100 Permit—Reporting requirements.

Every person that possesses a valid adult film production public health permit or registration shall report to the department any changes in status to the business made reportable by departmental regulations within fifteen (15) days of the change.

11.39.110 Permit—Suspension and revocation and fines.

A.

Any permit issued pursuant to this chapter may be suspended or revoked by the department and fines consistent with the provisions of this chapter may be imposed by the department for a violation of this chapter or any other violation of law creating a risk of exposing performers to sexually transmitted infections, including any violation of applicable provisions of the Los Angeles County Code, the California Health and Safety Code, the blood borne pathogen standard, California Code of Regulations Title 8, section 5193 or the exposure control plan of the producer of adult films, or any combination of such violations. The failure of a producer of adult films to require performers to use condoms during any acts of vaginal or anal sexual intercourse is a violation of this chapter.

B.

Whenever the department determines that a permittee has failed to comply with the requirements of this chapter, any other violation of law creating a risk of exposing performers to sexually transmitted infections, including any violation of applicable provisions of the Los Angeles County Code, the California Health and Safety Code, the blood borne pathogen standard, California Code of Regulations Title 8, section 5193 or the exposure control plan of the producer of adult films, or any combination thereof, a written notice to comply shall be issued to the permittee. The notice to comply shall include a statement of the deficiencies found, set forth the corrective measures necessary for the permittee to be in compliance with this chapter, and inform the permittee that failure to comply may result in the imposition of a fine or other penalty, including suspension and/or revocation of any and all permits. The notice to comply shall also advise the permittee of his or her right to an administrative review.

C.

A written request for an administrative review must be made by the noticed permittee within fifteen (15) calendar days of the issuance of the notice to comply. The failure to request an administrative review within the prescribed time shall be deemed a waiver of the right to an administrative review. The administrative review shall be held within fifteen (15) calendar days of the receipt of a written request for a review. Upon the written request of permittee or on its own motion, the department may advance or postpone the scheduled administrative review date, if permittee demonstrates good cause.

D.

The department shall issue a written notice of decision specifying any penalties imposed on permittee to the permittee within five (5) days of the administrative review or waiver, excluding weekends and holidays. For permits that have been suspended or revoked, the notice of decision shall specify the acts or omissions found to be in violation of this chapter; and, in the case of a suspended permit, shall state the extent of the suspension. The notice of decision shall also state the terms upon which the permit may be reinstated or reissued, if any.

E.

Notwithstanding any other provision of this chapter, if any immediate danger to the public health or safety is found or is reasonably suspected, the department may immediately suspend the adult film production public health permit, initiate a criminal complaint and/or impose any fine permitted by this chapter, pending a determination of an administrative review, as provided herein. Immediate danger to the public health and/or safety shall

include any condition, based upon inspection findings or other evidence, that can cause, or is reasonably suspected of causing, infection or disease transmission, or any known or reasonably suspected hazardous condition.

1. Whenever an adult film production public health permit issued is immediately suspended or a fine is imposed pursuant to this subdivision E of this section, the department shall issue to the permittee so suspended or fined, a written notice to comply setting forth the acts or omissions with which the permittee is charged, specifying the sections of the Los Angeles County Code, California Health and Safety Code, blood borne pathogen standard, California Code of Regulations Title 8, section 5193 or the exposure control plan of the producer of adult films, or the combination of alleged violations, and informing the permittee of the right to an administrative review.
2. At any time within fifteen (15) calendar days of service of such notice to comply, the permittee may request, in writing, an administrative review by the department to show cause why the imposed suspension or fine is unwarranted. The administrative review shall be held within fifteen (15) calendar days of the receipt of a request. A failure to request an administrative review within fifteen (15) calendar days shall be deemed a waiver of the right to such review.
3. At any time prior to an administrative review or waiver thereof, the recipient of a notice to comply issued pursuant to this subsection F, may correct the deficiencies noted in the notice to comply and request a reinspection at any time when the producer of adult films is actually filming an adult film.
4. In the case of a request for reinspection as set forth in subsection E.3 above, the department shall reinspect as soon as practical. In the event the deficiencies noted in the notice to comply are corrected to the satisfaction of the health officer, the department has discretion to reinstate or modify any suspension of a permit and cancel or modify any fine imposed pursuant to this subsection F. If the department determines that the deficiencies identified in the notice to comply have been corrected, but the department elects not to reinstate the suspension or cancel the fine imposed pursuant to this subsection F, the department shall notify the permittee of this decision in writing. The permittee shall have fifteen (15) calendar days from receipt of said notification to seek an administrative review of this decision.

F. The department may, after an administrative review or waiver thereof, modify, suspend, revoke or continue all such action previously imposed upon a permittee pursuant to this chapter or impose any fine imposed by law for violations of this chapter or any other laws or standards affecting public health and safety, including but not limited to the Los Angeles County Code, the California Health and Safety Code, the blood borne pathogen standard, California Code of Regulations Title 8, section 5193 or the exposure control plan of the permittee, or any combination thereof, or for interference with a county health officer's performance of duty.

G. A permit issued pursuant to this chapter may be reissued or reinstated, if the department determines that the conditions which prompted the suspension or revocation no longer exist and any fine imposed pursuant to this chapter has been satisfied.

H. In the event a permit is suspended or revoked, the producer of adult films whose permit was revoked shall cease filming any adult film unless and until the permit is reinstated or reissued.

PART 3 COMPLIANCE AND ENFORCEMENT

11.39.120 Compliance with the provisions in this chapter shall be mandatory:

- A. The provisions of this chapter are in full force and effect in the county.
- B. Any producer of adult films filming any adult films within the county, including any person or entity owning or operating any business regulated by this chapter, must comply with the provisions of this chapter.
- C. In addition to any other penalty provided for under this chapter, consistent with the process set forth herein for notice and administrative review, the department may impose a fine on persons violating any provision of this chapter or any law, regulation or standard incorporated into this chapter. The department may impose a civil fine upon such violators in an amount not to exceed \$500.00 per violation, as appropriate. The imposition of such fines shall, in no way, limit the authority or ability to impose other requirements of this chapter or seek other remedies against alleged violators.
- D. Any person or entity who produces or films adult films for commercial purposes within the county without a valid adult film production public health permit, or any person, who violates any law, ordinance or regulation governing any activity regulated by this chapter, or who, upon demand of the county health officer, refuses or neglects to conform to a lawful order or directive of a county health officer pertaining to conduct regulated by this chapter, is guilty of a misdemeanor, punishable by fine of \$1,000.00, imprisonment in the county jail for a period not to exceed six months, or both. Each such act is punishable as a separate offense.

11.39.130 Health officer—Enforcement.

The county health officer may enter and inspect any location suspected of conducting any activity regulated by this chapter, and, for purposes of enforcing this chapter, the county health officer may issue notices and impose fines therein and take possession of any sample, photograph, record or other evidence, including any documents bearing upon adult film producer's compliance with the provision of the chapter. Such inspections may be conducted as often as necessary to ensure compliance with the provisions of this chapter.

11.39.140 Noncompliance with county health officer—Injunctive relief.

Any act or failure to act which is a violation of this chapter may be the subject of a civil action to enjoin the person or entity so acting or failing to act to conform his or her conduct to the provisions of this chapter. A civil action to enforce the provisions of this section may be brought by the county counsel, the district attorney or any person directly affected by said failure to comply with the provisions of this chapter. The filing and prosecution of such an action shall, in no way, limit the authority or ability to impose other requirements of this chapter or remedies or penalties as permitted by law.

Part 4 OPERATIONS

11.39.150 Exposure control plan and reporting.

Every producer of adult films shall provide a written exposure control plan, approved by the department, describing how the requirements of this chapter will be implemented. The exposure control plan shall meet requirements established in departmental regulations.

SECTION 5

Chapter 22.56.1925 of the Division 1 of Title 22 of the Los Angeles County Code is amended as follows:

22.56.1925 Movie on-location filming.

- A. Notwithstanding the other provisions of this Part 14, applications for movie on-location filming permits shall be filed with the filming permit coordination office which shall approve such application for a time period not to exceed the time period specified in this Title 22 where it finds that the findings set forth in Section 22.56.1860 and subsection A1 of Section 22.56.1880 have been met by the applicant. In addition, in lieu of subsection A2 of Section 22.56.1880, the filming permit office shall also find that such approval will not result in a frequency of usage likely to create incompatibility between such temporary use and the surrounding area. Where an application is denied due to frequency of usage, the filming permit office shall specify the minimum time period between approvals which, in its opinion, is necessary to prevent such incompatibility.

In interpreting the other provisions of this Part 14 in relation to movie on-location filming, the filming permit office shall be substituted for the director, and the provisions of Sections 22.56.1840 and 22.56.1870 shall not apply.

- B. Any person or entity issued a permit for the filming of an adult film, as defined in section 11.39.010 of this Code, under this chapter or any other law authorizing the issuance of permits for commercial filming are required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or any other potentially infectious materials controls, in a manner consistent with California Code of Regulations, Title 8, Section 5193. Any such permit shall contain the following language: "Permittee must abide by all applicable workplace health and safety regulations, including California Code of Regulations Title 8, Section 5193, which mandates barrier protection, including condoms, to shield performers from contact with blood or other potentially infectious material during the production of films." The county shall charge, or shall direct any other person or entity contracting with the county to administer the film permitting process, to charge, entertainment industry customers seeking permits for the production of adult films a fee sufficient to allow periodic inspections to ensure compliance with the conditions set forth in Section 11.39.010.
- C. Any person or entity issued a permit for the filming of an adult film, as defined in section 11.39.010 of this Code, under this chapter or any other law authorizing the issuance of permits for commercial filming are required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or any other potentially infectious materials controls, in a manner consistent with California Code of Regulations, Title 8, Section 5193. Any such permit shall contain the following language: "Permittee must abide by all applicable workplace health and safety regulations, including California Code of Regulations Title 8, Section 5193, which mandates barrier protection, including condoms, to shield performers from contact with blood or other potentially infectious material during the production of films." The county shall charge, or shall direct any other person or entity contracting with the county to administer the film permitting process, to charge, entertainment industry customers seeking permits for the production of adult films a fee sufficient to allow periodic inspections to ensure compliance with the conditions set forth in Section 11.39.010.

SECTION 6. Competing Measures

In the event that this measure and another measure or measures relating to the permit process for adult films shall appear on the same ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other relating to the permit process for adult films shall be null and void.

SECTION 7. Amendment and Repeal.

This chapter may be amended to further its purposes by an ordinance passed by a majority vote of the Board of Supervisors.

This chapter may not be repealed, except by an ordinance proposed either by petition or by the Board of Supervisors at its own instance and adopted by a vote of the electors, or by an amendment of the charter superseding the ordinance.

SECTION 8. Severability

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of the Act are severable.